



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 9, 2003

Ms. Mary Gayle Ramsey
City Attorney
City of Terrell
P.O. Box 310
Terrell, Texas 75160

OR2003-6340

Dear Ms. Ramsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187350.

The City of Terrell (the "city") received a request for "any and all records...relative to 'Project Venus,'" and a request for a copy of the "incentive package for Project Venus." You argue that the requested information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The submitted information includes materials that are subject to section 552.022 of the Government Code. Section 552.022(a) provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted documents include an Economic Impact Report which is expressly public under section 552.022(a)(1), and may not be withheld unless it is expressly confidential under other law or excepted from disclosure under section 552.108 of

the Government Code. You do not claim the Economic Impact Report is excepted from disclosure under section 552.108. You do, however, assert that section 552.131 excepts the materials from disclosure.

We note that section 552.131(b) of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. As such, section 552.131(b) does not constitute "other law" making information confidential for purposes of section 552.022.¹ Therefore, the Economic Impact Report may not be withheld under section 552.131(b). However, this office has determined that section 552.131(a) does constitute "other law" for purposes of section 552.022(a). Thus, we will consider whether section 552.131(a) applies to the Economic Impact Report.

Section 552.131(a) excepts from public disclosure a business prospect's trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the governmental body's territory. Gov't Code § 552.131(a). You have not demonstrated how either the Economic Impact Report or the remaining submitted information relates to a trade secret or commercial or financial information, the release of which would cause substantial competitive harm to the person from whom the information was obtained. Therefore, section 552.131(a) is inapplicable to all of the submitted information. The city may not withhold any portion of the requested information under section 552.131(a) of the Government Code.

Finally, we consider whether section 552.131(b) applies to the submitted information other than the Economic Impact Report. Section 552.131(b) excepts from disclosure information about a financial or other incentive being offered to the business prospect by the governmental body "[u]nless and until an agreement is made with the business prospect." You inform us and the submitted information demonstrates that there are ongoing economic development negotiations between the city and a corporation. Based on your representations and our review of the submitted information, we conclude the city may withhold the marked information under section 552.131(b) of the Government Code.

In summary, the Economic Impact Report is expressly public under section 552.022(a)(1) and must be released. The city may withhold the marked information in the remaining submitted documents under section 552.131(b) of the Government Code. All other information in the remaining submitted documents must be released.

¹ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather R. Rutland". The signature is fluid and cursive, with the first name being the most prominent.

Heather R. Rutland
Assistant Attorney General
Open Records Division

HRR/sdk

Ref: ID# 187350

Enc: Submitted documents

c: Mr. Horace P. Flatt
209 Brookhollow Drive
Terrell, Texas 75160
(w/o enclosures)